UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHRISTOPHER E. BROWN, an individual, Plaintiff, vs. NASSAU COUNTY, a political subdivision of the state of New York, *d/b/a* NASSAU VETERANS MEMORIAL COLISEUM Defendants.	Case: CV-07-4811 (JFB)(ETB)

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CONSENT DECREE

THIS CONSENT DECREE (hereinafter "Decree") is entered into by and between CHRISTOPHER E. BROWN (the "Plaintiff"), on the one hand, and NASSAU COUNTY, a political subdivision of the state of New York, *which is the owner of the facility known as the* NASSAU VETERANS MEMORIAL COLISEUM ("Defendant"), on the other hand, hereinafter collectively the "Parties," on the date last executed below, and when subsequently approved by this Court.

IT IS HEREBY stipulated and agreed by and between the Plaintiff and Defendant as follows:

WHEREAS, the Plaintiff filed this action against Defendant for alleged violations of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* ("Title II" of the "ADA"), pursuant to which the Plaintiff sought a permanent injunction and attorneys' and expert's fees, expenses and costs;

WHEREAS, the Plaintiff filed this action against Defendant for alleged violations of the Rehabilitation Act, 29 U.S.C. 794, *et seq.* ("Rehab Act"), pursuant to which the Plaintiff sought damages, a permanent injunction and attorneys' and expert's fees, expenses and costs;

WHEREAS, Defendants do not admit, and expressly deny, any violation of any federal, state or local statute (including, but not limited to, the ADA), and state or municipal fire safety or building code, or any other wrongdoing or liability whatsoever;

WHEREAS, Plaintiff and Defendants have engaged in extensive negotiations and have agreed to a settlement of this action;

WHEREAS, the Parties desire to resolve this matter in order to avoid further expense, time, effort and uncertainty with regard to this action;

WHEREAS, it is the intent of the Parties to improve access to the Facility for persons with disabilities, consistent with the "***program access***" requirements as set forth in the ADA.

NOW, THEREFORE, in consideration for finally resolving all matters relating to the ADA allegations in the Complaint, the parties have agreed to compromise and settle this suit upon the following terms and conditions:

A. Subject to the Court approving and ratifying this Consent Decree ("Decree"), the parties hereby agree and will request the Court to enter a final order of dismissal with prejudice as to all claims, providing retention of jurisdiction by the Court to enforce, as necessary, the terms of this Decree.

B. This Decree shall be binding upon and inure to the benefit of the parties hereto and their respective successor and/or assigns. The parties shall perform their obligations under the Decree in good faith.

C. Except as otherwise provided herein (in the event a new facility is to be constructed), Defendant shall complete all applicable modifications referenced herein within eighteen (18) months from the date this Decree is entered by the Court. Any delays in making such modifications that are caused by third parties, including but not limited to, acts of God, construction contractors, or city building officials, inspectors, or permitting departments, will not be deemed to violate the compliance date as long as the Defendant makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

The Parties additionally agree to the following:

ADA ACCESSIBILITY AND BARRIER REMOVAL

1. The above recitals constitute part of this Decree. Plaintiff alleges in the Complaint filed in this action that certain physical barriers to access exist at the Facility which is the subject of this action, more commonly referred to as the “THE COLISEUM” located at 1255 Hempstead Turnpike, Uniondale, NY 11553 (the “Property” or the “Facility”), that restrict and/or limit his access to the Facility.[1] In response to and in settlement of the allegations contained in Plaintiff’s Complaint and all other allegations brought or which could have been brought in this action with respect to this Facility, the parties agree as follows:

[1] For the purposes of this Settlement Agreement, the following abbreviations shall apply (1) ADAAG refers to the ADA Accessibility Guidelines, 28 C.F.R. Pt. 36 App. A.

2. The County has announced plans to build a new state-of-the-art sports arena to replace the current Facility. The current plan calls for construction of the new facility to begin in 2012 and that the new facility to open in 2015, if plans for the new facility are approved. In the event that such plans are approved and construction of the new facility is commenced within eigthteen months from the date this stipulation is entered, the County will be under no obligation to complete the renovations to the existing Facility that are specified in Paragraph 3 below.

3. In the event that the plans for a new facility are not approved, Defendant shall cause the barrier removal, alterations, and modifications agreed to in this Settlement to be made to the Facility. More specifically, Defendant agrees to perform the barrier removal, alterations, and modifications as set forth herein:

A. Defendant shall bring the total number of accessible seating locations provided at the facility to one hundred forty four (144). All new accessible seating locations shall be provided in such locations as Defendant, in its discretion, may deem suitable and feasible..

B. At all other permanent food, merchandise or concession counters, to the extent that Defendant controls said counters, Defendant shall modify at least one counter in each bank of counters to have a maximum height of 36". If Defendant is not in control of said counters, Defendant shall notify the party in control of said counters that they must be made accessible. Defendant's obligation under this Agreement shall be complete once the notification letter is sent to the proper party in control of said elements.

C. Defendant shall provide at least one (1) fully accessible stall and one (1) fully accessible sink within two (2) men's and two (2) women's restrooms located on the 200 level of the Facility. Additionally, one entrance and exit to each of the modified restrooms discussed herein shall be modified to provide at least 32" clear width at the doorframe to allow a person in a wheelchair to safely utilize the restroom.

D. The "drop-off" area on the exterior of the west side of the building has a 2" curb but lacks a ramp. Defendant will provide a wheelchair accessible ramp with a slope of no greater than 1:12.

E. The designated accessible ramps on the south side of the property are not flush with the ground and have lips of over 1". Re-grade or bevel the ends of these ramps to be flush with the ground.

F. The curb cuts on the northeast corner of the building are not flush with the ground and have lips of over 1". Re-grade or bevel the bottom of these curbs to be flush with the ground.

G. The "drop-off" area on the exterior of the east side of the building has a ramp but it is not flush with the ground at the bottom with a 1.5" lip. Re-grade or bevel the bottom of the ramp to be flush with the pavement.

H. There are two table seating areas at the exterior of the Property, however, none of the tables in either seating area are wheelchair accessible. Provide at least 2 wheelchair accessible tables in each of table seating areas. If Defendant is not in control of said exterior seating, Defendant shall notify the party in control of said exterior seating that they must be made accessible. Defendant's obligation under this Agreement shall be complete once the notification letter is sent to the proper party in control of said elements.

I. Door thresholds at the main gate entrances into the building have changes in level of between 7/8" and 1 1/8". Bevel the entrances to have a maximum change in level of ½" height.

J. In the designated accessible parking lots, Field 1 and Field 5, provide Eleven (11) additional van accessible parking spaces in each lot and provide accessible signage for each van accessible space.

3. All modifications to be undertaken pursuant to this Decree shall be completed within eighteen (18) months of the date this Settlement Agreement is fully executed and approved by the Court, unless otherwise provided in this agreement. The Parties hereto acknowledge and stipulate that the barrier removal, alterations and modifications agreed to in this Decree shall constitute, pursuant to and for the purposes of Title II of the ADA, its implementing regulations, and Standards, that which is readily achievable for the removal of existing architectural barriers to access at the Facility in the context of ***program access***. The parties further agree that once the modifications stated herein are successfully implemented, that the Defendant's program at the Property, when viewed as a whole, will be accessible.

4. The barrier removal, alterations and modifications required hereby shall be completed in all respects within the time frame set forth in Paragraph 3. The time period for completion by Defendants shall be subject to acts of God, *force majeure*, or events beyond the control of Defendants such as inability to obtain building or zoning permits, failure of inspectors to make inspections, contractor defaults or work stoppages. In the event of such unforeseen circumstances, the time period for completion of the barrier removal, alterations and modifications provided in Paragraph 1 will be extended by the number of days reasonably attributable to such delay-causing event, as long as Defendants provide written notice by

certified or registered mail or by facsimile to Plaintiff's counsel (see paragraph 16(b) below) of the delay, the specific reasons therefore, the estimate time for completion and makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

RIGHT OF INSPECTION

5. Upon the completion of the barrier removal as set forth in Paragraph 2, Defendants shall provide written notice by certified or registered mail or by facsimile to Plaintiff's counsel (see paragraph 16(b) below) of such completion and shall afford Plaintiff and Plaintiff's representatives reasonable access to the Facility, subject to approval by the leesee, to verify completion of the modifications required herein. Nothing herein shall be construed to restrict or limit Plaintiff and/or his representatives from otherwise visiting or accessing the Facility. Defendants' failure to provide timely notice to the Plaintiff as required in this paragraph shall not represent a material breach of this Decree, but neither shall it prelude Plaintiff and/or Plaintiff's representatives from verifying the completion of the work required by this Decree.

ENFORCEMENT PROVISIONS

6. In the event the barrier removal, alterations, and modifications required hereby are not timely completed in all respects, the Plaintiff shall be entitled to seek injunctive relief.

DAMAGES, ATTORNEY'S FEES, COSTS AND LITIGATION FEES

6(a). Without admitting liability of any kind, Defendant hereby agrees to pay Plaintiff and Plaintiff's attorneys the sum of ($90,000.00) for Plaintiff's attorney's fees, costs, litigation expenses and damages which, along with the other provisions of this Decree, shall constitute a full and final resolution of this matter. Payment shall be made out to the order of "Ku &

Mussman, P.A. Trust", and delivered to Plaintiff's counsel within fifteen (15) days of execution of this Decree.

The Parties acknowledge that this provision of the Decree was and is a material inducement for Plaintiff to enter into this Decree. Accordingly, should Defendant fail to satisfy the entire settlement amount, for any reason, Plaintiff shall have the right to void this Decree at his sole discretion.

NON-DISPARAGEMENT

7. The Parties agree that they will not make any disparaging, denigrating, demeaning or untrue statements about the other party or any person associated with the other party, including any officer, director, member, consultant, expert, or legal representative of the other party with respect to any of the issues raised, or which could have been raised in the above-captioned action.

RELEASE OF CLAIMS

8. Plaintiff hereby releases Defendants (and Defendant's subsidiaries, divisions, affiliates, related companies, predecessors, successors, heirs, executors, administrators, assigns, directors, officers, employees, agents, and attorneys) from any and all claims, causes, damages, demands, liabilities, equities and any and all other claims, whether known or unknown, from the beginning of the world to the date of this Decree, including, without limitation, any and all claims pursuant to Title II of the ADA and Rehab Acts regarding the subject Property (and any other federal, state or local law governing physical access features for persons with disabilities at public accommodations) such as the claims that were asserted, or could have been asserted, in the above-captioned action, *provided that*, this release shall in no way limit Plaintiff's or the Court's ability to monitor and enforce Defendants' compliance with the terms of this Decree.

Nothing herein should be construed as a waiver or release of any claim Plaintiff may have against any property or facility other than the subject Facility or any tenants that fail to maintain accessible facilities at the Property.

This release does not limit either party's ability to enforce the other party's compliance with the terms of this Decree.

9. Within five (5) days of the date this Decree is fully executed by the Parties, the Parties shall file and request that the Court approve this Decree.

SEVERABILITY

10. This Decree constitutes the entire understanding and agreement of the Parties and supersedes all prior or contemporaneous negotiations or agreements (written or oral) and cannot be modified, amended or revoked except by the express written consent of all Parties.

CONSTRUCTION/ AMBIGUITIES

11. The Parties acknowledge that each party has reviewed and participated in the drafting of this Decree and that the rule of construction to the effect that any ambiguities are to resolved against the drafting party shall not be employed in its interpretation.

WAIVER

12. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of such rights.

EXECUTION

13. The Parties have read and understood this Decree, have had the opportunity to discuss same with legal counsel, and have voluntarily agreed to sign the Decree and agree to be bound thereby.

14. Each person executing this Decree on each party's behalf has been duly authorized to sign on behalf of the respective party and to bind each to the terms of the Decree.

15. The Parties agree that this Decree may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument. The Parties agree and acknowledge that a photocopy, facsimile copy or scanned copy of an executed signature may be used in place of an original executed signature for any purpose.

NOTICE

16. Any notice, correspondence, payment or other communication contemplated by or connected with this Decree shall be in writing and directed as follows:

(a) If to Defendants: Nassau County Attorney
One West Street
Mineola, NY 11501
Facsimile (516) 571-3058

(b) If to Plaintiff: Louis I. Mussman, Esq.
Ku & Mussman, P.A.
12550 Biscayne Blvd., Suite 406
Miami, Florida 33181
Facsimile (305) 891-4512
E-mail: louis@kumussman.com

NOW, THEREFORE, THE PARTIES HAVE REACHED FULL AND FINAL AGREEMENT AS TO THE READILY ACHIEVABLE MODIFICATIONS AND OTHER COMPROMISES AS SET FORTH HEREIN, THAT WILL BRING THE PROPERTY INTO FULL COMPLIANCE WITH THE PROGRAM ACCESS REQUIREMENTS OF THE ADA, AND THE COURT SPECIFICALLY FINDS THAT EACH SUCH MODIFICATION AND PROVISION HEREIN IS JUST AND PROPER.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS THEREOF, THE PARTIES AND THEIR ATTORNEYS SIGN THIS CONSENT DECREE ON THE DATES SET FORTH HEREIN:

CHRISTOPHER E. BROWN,
Plaintiff,

By: ____________________
Christopher E. Brown

Date: 7/09/11

COUNTY OF NASSAU,
Defendant,

By: ____________________
Signature

Date: ____________________

____
Rob R. Walker, Chief Deputy County Executive

ACCEPTED AND AGREED TO:

By: ____________________
Louis I. Mussman, Esq.
Ku & Mussman, P.A.
12550 Biscayne Blvd., Ste.406
Miami, FL 33181

By: ____________________
Andrew R. Scott, Esq.
Deputy County Attorney
One West Street
Mineola, NY 11501

SO ORDERED: ____________________

IN WITNESS THEREOF, THE PARTIES AND THEIR ATTORNEYS SIGN THIS CONSENT DECREE ON THE DATES SET FORTH HEREIN:

CHRISTOPHER E. BROWN,
Plaintiff,

By: ______________________
Christopher E. Brown

Date: ______________________

COUNTY OF NASSAU,
Defendant,

By: ______________________
Signature

Date: 7/8/11

____
Rob R. Walker, Chief Deputy County Executive

ACCEPTED AND AGREED TO:

By: ______________________
Louis I. Mussman, Esq.
Ku & Mussman, P.A.
12550 Biscayne Blvd., Ste.406
Miami, FL 33181

By: ______________________
Andrew R. Scott, Esq.
Deputy County Attorney
One West Street
Mineola, NY 11501

SO ORDERED: ______________________